



GENERAL ASSEMBLY

COMMONWEALTH OF KENTUCKY

2014 REGULAR SESSION

HOUSE BILL NO. 430

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ALISON L UNDERGAN GRIMES
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY R. Adler

1 AN ACT relating to underground facility protection.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔Section 1. KRS 367.4903 is amended to read as follows:

4 As used in KRS 367.4903 to 367.4917:

5 (1) "Underground facility" means an underground line or system used for producing,
6 storing, conveying, transmitting, or distributing telecommunications, electricity,
7 gas, petroleum, petroleum products, cable television, hazardous liquids, water,
8 steam, or sewerage, including storm drainage;

9 (2) "Damage" means weakening of structural or lateral support or penetration of a
10 facility coating, housing, or other protective device. It also means the partial or
11 complete dislocation or severance of underground facilities or rendering any
12 underground facility permanently inaccessible by the placement of a permanent
13 structure having one (1) or more stories;

14 (3) "Demolition" means any operation by which a structure or mass of material is
15 wrecked, razed, moved, or removed by means of mechanized equipment, or
16 discharge of explosives;

17 (4) "Excavator" means any entity or individual, other than those exempted by KRS
18 367.4915, engaged in excavation, demolition, or timber harvesting using
19 mechanized equipment;

20 (5) "Operator" means any entity or individual owning or operating underground
21 facilities to serve the public;

22 (6) "Excavation" means any activity that results in the movement, placement, probing,
23 boring, or removal of earth, rock, or other material in or on the ground by the use of
24 any tools or equipment, by the discharge of explosives, or by the harvesting of
25 timber using mechanized equipment. Forms of excavating include but are not
26 limited to auguring, backfilling, digging, ditching, drilling, driving, grading, piling,
27 pulling-in, ripping, scraping, trenching, and tunneling. Driving wooden stakes by

1 use of hand tools to a depth of six (6) inches or less below existing grade shall not
 2 constitute excavation;

3 (7) "Emergency" means there exists substantial likelihood that loss of life or property, {
 4 or} the inability to restore interrupted utility service, an imminent danger to health
 5 or the environment, or the blockage of public transportation facilities will result
 6 before procedures required under KRS 367.4909 to 367.4913 can be completed;

7 (8) "Protection notification center" means an operator-provided notification center
 8 through which an excavator can contact the operator to enable the operator to
 9 provide the excavator with the approximate location of underground facilities;

10 (9) "Kentucky Contact Center" {"One-call-center"} means Kentucky Underground
 11 Protection, Inc., organized as a nonprofit corporation and a multimember
 12 protection notification center providing a single telephone contact number and
 13 designated by the Kentucky Public Service Commission to be the sole recipient of
 14 811 dialed calls through which an excavator may contact all Kentucky Contact
 15 Center {operator one-call-center} members and all affected operators may receive
 16 information to enable them to provide the excavator with the approximate location
 17 of underground facilities;

18 (10) "Routine road maintenance" means preservation, including road repairs and
 19 resurfacing, and the replacement of signs, posts, and guardrails at the exact same
 20 location when no additional penetration of existing grade is necessary, but does
 21 not include road construction, installation of signs, posts, and guardrails, or any
 22 activity that requires {or} penetration of existing grade;

23 (11) "Approximate location," when referring to an underground facility, means:

24 (a) For underground metallic facilities and underground nonmetallic facilities
 25 with metallic tracer wire, a distance not to exceed the combined width of the
 26 underground facility plus eighteen (18) inches measured from the outer edge
 27 of each side of the underground facility; or

1 (b) For nonmetallic facilities without metallic tracer wire, the underground
 2 facility shall be located as accurately as possible from field location records
 3 and shall require notification from the operator of the inability to
 4 accurately locate the facility;

5 (12) "Business day" means any day except Saturday, Sunday, and holidays established by
 6 federal or state statute;

7 (13) "Nonintrusive excavating" means excavation using hand tools or equipment that
 8 uses air or water pressure as the direct means to break up soil for removal by hand
 9 tools or vacuum excavation;

10 (14) "Mechanized equipment" means mechanical power equipment, including trenchers,
 11 bulldozers, power shovels, augers, backhoes, scrapers, drills, cable and pipe plows,
 12 ~~hydroexcavators,~~ skidders, and yarders;

13 (15) "Normal excavation locate request" means a notification made to a protection
 14 notification center where a request for locating utility facilities is processed;

15 (16) "Emergency locate request" means a notification made to a protection notification
 16 center by an excavator to alert facility owners or operators of the need to begin
 17 immediate excavation in response to an emergency; and

18 (17) "Design information~~locate~~ request" means a notification made to a protection
 19 notification center by a person providing professional services and making a
 20 request in preparation for bidding, preconstruction engineering, or other advance
 21 planning efforts. A design information~~locate~~ request may not be used for
 22 excavation purposes.

23 ➔Section 2. KRS 367.4909 is amended to read as follows:

24 (1) Each operator shall provide protection notification center access to excavators.

25 (2) Voluntary operator membership in the Kentucky Contact Center~~one-call-center~~
 26 shall satisfy the requirement of subsection (1) of this section.

27 (3) Each operator member of the Kentucky Contact Center~~one-call-center~~ shall

1 provide and update as needed to the Kentucky Contact Center~~[one-call-center]~~ the
 2 general location of its underground facilities, the operator identity and business
 3 address, and emergency notification telephone numbers.

4 (4) An operator shall respond to facility locate requests as follows:

5 (a) To a normal excavation locate request within two (2) business days after
 6 receiving notification from an excavator.

7 (b) To an emergency locate request as quickly as possible but not to exceed forty-
 8 eight (48) hours after receiving notification from an excavator; and

9 (c) ~~[Beginning one (1) year from July 12, 2012,]~~ To a design information~~[locate]~~
 10 request within ten (10) business days after receiving notification from the
 11 person making the request~~[an excavator]~~.

12 (5) An operator shall, upon receiving an emergency locate request or a normal
 13 excavation locate request:

14 (a) Inform the excavator of the approximate location and description of any of the
 15 operator's facilities that may be damaged or pose a safety concern because of
 16 excavation or demolition;

17 (b) Inform the excavator of any other information that would assist in locating
 18 and avoiding contact with or damage to underground facilities;

19 (c) Unless permanent facility markers are provided, provide temporary markings
 20 to inform the excavator of the ownership and approximate location of the
 21 underground facility; and

22 (d) Notify the requesting party if underground facilities are not in conflict with the
 23 excavation or demolition.

24 (6) Upon receiving a design information~~[locate]~~ request, an operator shall
 25 contact~~[provide to]~~ the person making the request within the time period specified
 26 in subsection (4) of this section. The operator shall:

27 (a) Designate with temporary underground facility markers the location of all

1 underground facilities owned by the operator within the area of the design
 2 information request as defined in Section 1 of this Act;

3 (b) Provide to the person making the design information request a description
 4 of all underground facilities owned by the operator in the area of the design
 5 information request and the location of the facilities, which may include
 6 drawings marked with a scale, dimensions, and reference points for
 7 underground utilities already built in the area or other facility records that
 8 are maintained by the operator; or

9 (c) Allow the person making the design information request or an authorized
 10 person to inspect the drawings or other records for all underground
 11 facilities with the proposed area of excavation at a location that is
 12 acceptable to the operator~~[the best available description of all utility facilities~~
 13 ~~within the area of the proposed excavation. This includes but is not limited to~~
 14 ~~prints, maps, drawings, and other facility records of existing and proposed~~
 15 ~~utility facilities].~~

16 (7) An operator may reject a design information request based upon security
 17 considerations or if producing the information will place the operator at a
 18 competitive disadvantage, pending the operator obtaining additional information
 19 confirming the legitimacy of the notice. The operator shall notify the person
 20 making the design information request and may request additional information.

21 (8) Temporary underground facility markers shall consist of paint, chalk, flags, stakes,
 22 or any combination thereof and shall conform to the following standards of the
 23 American Public Works Association uniform color code:

- | | | |
|--------|--|-------------------------------|
| 24 (a) | Electric power distribution and transmission | Safety Red |
| 25 (b) | Municipal electric systems | Safety Red |
| 26 (c) | Gas distribution and transmission | High visibility safety yellow |
| 27 (d) | Oil distribution and transmission | High visibility safety yellow |

- | | | | |
|---|-----|--|-------------------------------|
| 1 | (e) | Dangerous materials, product lines | High visibility safety yellow |
| 2 | (f) | Telecommunication systems and cable television | Safety alert orange |
| 3 | (g) | Temporary survey markings | Safety pink |
| 4 | (h) | Police and fire communications | Safety alert orange |
| 5 | (i) | Water systems | Safety precaution blue |
| 6 | (j) | Sewer and storm drainage systems | Safety green |
| 7 | (k) | Proposed excavation or construction boundaries | White |
| 8 | (l) | Reclaimed water, slurry, and irrigation facilities | Purple |

9 ~~(9)~~~~(8)~~ If extraordinary circumstances exist, an operator shall notify the excavator of
 10 the operator's inability to comply with this section. Extraordinary circumstances
 11 include extreme weather conditions, force majeure, disasters, or civil unrest that
 12 make timely response difficult or impossible.

13 ~~(10)~~~~(9)~~ All underground facilities installed after January 1, 2013, shall include a
 14 means to accurately identify and locate the underground facilities from the surface.
 15 This subsection does not apply to the repair of existing facilities.

16 ➔Section 3. KRS 367.4911 is amended to read as follows:

- 17 (1) (a) Each excavator, or person responsible for an excavation, planning
 18 excavation or demolition work shall, not less than two (2) full business days
 19 nor more than ten (10) full business days prior to commencing work, notify
 20 each affected operator of the excavator's intended work and work schedule.
 21 Contacting the applicable protection notification centers shall satisfy this
 22 requirement.
- 23 (b) An excavator may commence work before the two (2) full business days
 24 provided for in paragraph (a) of this subsection have elapsed if all affected
 25 operators have notified the person that the location of all the affected
 26 operators' facilities have been marked or that they have no facilities in the area
 27 of the proposed excavation, demolition, or timber harvesting.

- 1 (2) Locate requests are valid for twenty-one (21) calendar days from the day of the
2 initial request.
- 3 (3) Each excavator shall provide each applicable protection notification center with
4 adequate information regarding:
 - 5 (a) The name of the individual making the notification;
 - 6 (b) The excavator's name, address, and a telephone number;
 - 7 (c) The excavation or demolition site location or locations, each of which shall
8 not exceed two thousand (2,000) feet in length unless the excavator and
9 operator agree to a larger area, the city or community, county and street
10 address, including the nearest cross street;
 - 11 (d) The type and extent of excavation or demolition to be performed;
 - 12 (e) A contact name and telephone number of the person responsible for the work
13 to be performed.
- 14 (4) If more than one (1) excavator will operate at the same site, each excavator shall
15 notify the protection notification centers individually. Notification by an excavator
16 will serve as notification for any of that excavator's employees. Failure by an
17 excavator to notify the protection notification center does not relieve individual
18 employees of responsibility.
- 19 (5) The excavator shall inform and provide to excavation or demolition site employees:
 - 20 (a) The underground facility location provided by each operator;
 - 21 (b) Any related safety information provided by each operator; and
 - 22 (c) The locate request identification number assigned by each~~the~~ protection
23 notification center.
- 24 (6) The excavator shall protect and preserve temporary underground facility markers
25 until the scheduled excavation or demolition is completed.
- 26 (7) If, after the two (2) day period provided by KRS 367.4909(4)(a), the excavator finds
27 evidence of an unmarked underground facility at the site, he shall immediately

- 1 notify the protection notification center.
- 2 (8) The excavator shall contact the protection notification center to request remarking
 3 two (2) business days in advance of the expiration of each twenty-one (21) day
 4 period while excavation or demolition continues or if:
- 5 (a) The markings of any underground facility have been removed or are no longer
 6 visible; or
- 7 (b) The excavator has changed the work plan or location previously filed.
- 8 (9) (a) Each excavator who conducts or is responsible for any excavation or
 9 demolition that results in underground facility damage shall cease excavation
 10 or demolition activities and notify all affected operators of the location and
 11 nature of the underground facility damage.
- 12 (b) If the underground facility damage causes concern for public or workplace
 13 safety, the excavator shall notify appropriate public safety agencies of the
 14 location and nature of the safety concern.
- 15 (c) If the underground facility damage results in the escape of any flammable,
 16 toxic, or corrosive gas or liquid, the excavator shall cease excavation or
 17 demolition activities and immediately report to the appropriate authorities by
 18 calling the 911 emergency telephone number.
- 19 (10) When excavation or demolition is necessary within the approximate location of the
 20 underground facility, the excavator shall hand-dig or use nonintrusive means to
 21 avoid damage to the underground facility.
- 22 (11) Upon request by an operator or when the proposed excavation location cannot be
 23 accurately identified, an excavator shall mark the boundaries of the location to be
 24 excavated using the procedure set forth in KRS 367.4909(8)(k)[(7)]. After marking
 25 the boundaries, the excavator shall contact the protection notification center or
 26 centers. The requirements of KRS 367.4909(4) to (10) are reestablished upon the
 27 operator receiving notification of this marking from the protection notification

1 center or centers. This marking shall not alter, or relieve the excavator from
 2 complying with, the requirements of KRS 367.4905 to 367.4917.

3 ➔Section 4. KRS 367.4913 is amended to read as follows:

4 (1) Each protection notification center shall:

- 5 (a) Operate the protection notification center during all business days;
- 6 (b) Provide a locate request identification number to the excavator for each
 7 excavation or demolition location request;
- 8 (c) Promptly after receiving an excavation or demolition work notification from
 9 an excavator, provide to each of its affected operator members the excavator
 10 information required by KRS 367.4911(3);
- 11 (d) Maintain a list of all its operator member's identities, business address and
 12 business and emergency telephone numbers and record this information in
 13 accordance with KRS 64.012 with the county clerk of each county where the
 14 operator member has underground facilities. The county clerk shall provide
 15 this information upon request for the actual cost of providing a copy, to be
 16 paid by the requesting party to the county clerk. The county clerk shall assume
 17 no liability associated with the receipt of this information from the protection
 18 notification center or for subsequent provision of this same information to the
 19 requesting party;~~{and}~~
- 20 (e) Make the operator members information list available to any person for
 21 inspection at its place of business without charge or provide a copy of the list
 22 to any person for any county upon request for a fee not to exceed the actual
 23 cost of providing a copy;

24 (f) Define and adopt policies and procedures for processing design information
 25 requests; and

26 (g) Provide the person making a design information request a list of identified
 27 operators that will receive notification and notify those operators.

1 (2) The **Kentucky Contact Center**~~[one-call-center]~~ shall be governed by a board of
 2 directors composed of representatives of member operators who are elected by the
 3 membership. Board seats may be filled by representatives of the following:

- 4 (a) A natural gas provider;
- 5 (b) An electric provider;
- 6 (c) A telecommunications provider;
- 7 (d) A water/sewer provider;
- 8 (e) An interstate pipeline operator;
- 9 (f) A municipal utility operator; and
- 10 (g) An advisory, nonvoting representative of one (1) of the following:
 - 11 1. Home Builders Association of Kentucky;
 - 12 2. National Electrical Contractors Association;
 - 13 3. Associated General Contractors of Kentucky; or
 - 14 4. Kentucky Association of Plumbing, Heating-Cooling Contractors.

15 (3) The **Kentucky Contact Center's**~~[one-call-center's]~~ board of directors shall establish
 16 the method to calculate the cost of service provided by the center.

17 (4) **The Kentucky Contact Center**~~[Kentucky Underground Protection, Inc.]~~ shall serve
 18 all Kentucky counties.

19 ➔Section 5. KRS 367.4917 is amended to read as follows:

20 (1) An excavator who fails to comply with any provision of KRS 367.4911, or an
 21 operator who fails to comply with any provision of KRS 367.4909, shall be guilty of
 22 endangering underground facilities and may be subject to a fine of two hundred and
 23 fifty dollars (\$250) for the first offense, no more than one thousand dollars (\$1,000)
 24 for the second offense within one (1) year, and no more than three thousand dollars
 25 (\$3,000) for the third and any subsequent offense.

26 (2) A protection notification center that fails to comply with any provision of KRS
 27 367.4913 shall be subject to a fine of one thousand dollars (\$1,000) for each

1 offense.

2 (3) A person that knowingly provides false notice to a utility notification center of an
3 emergency as defined in KRS 367.4903 shall be subject to a fine of one thousand
4 dollars (\$1,000) for each offense.

5 (4) (a) All fines recovered for a violation of this section shall be paid to the general
6 fund of the state, county, ~~{or }city,~~ or fire prevention agency which issued the
7 citation.

8 (b) In the event that more than one (1) government agency was involved, the court
9 shall direct an apportionment of the fines.




Speaker-House of Representatives



President of Senate

Attest:



Chief Clerk of House of Representatives

Approved



Governor

Date

